

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 9, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2695

Introduced by Assembly Member Niello

February 22, 2008

An act to amend Sections 40001, 43209, 45014, and 45024 of, to add Sections ~~40144 and 45025~~ 40053.5 and 40144 to, to add Chapter 2.7 (commencing with Section 48300) to Part 7 of, and to add Chapter 8 (commencing with Section 49700) to Part 8 of, Division 30 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 2695, as amended, Niello. Solid waste: enforcement: illegal dumping.

(1) The California Integrated Waste Management Act of 1989 establishes an integrated waste management program administered by the California Integrated Waste Management Board.

The act defines various terms for purposes of the act.

This bill would additionally define “illegal dumping” as meaning the disposal of solid waste at a location that is not a permitted solid waste facility or is not otherwise authorized for the disposal of solid waste pursuant to the act and regulations adopted by the board and would define “illegal dump” as meaning a location at which illegal dumping has occurred.

The bill would provide that the act does not limit the power of a city, county, or district to impose and enforce any conditions or restrictions

on, or abate the effects of, illegal dumping or any other disposal or abandonment of solid waste at a location that violates a local ordinance or regulation, as specified.

(2) The act allows a local governing body to designate a local enforcement agency, subject to certification by the board, to enforce specified provisions of the act. If a local enforcement agency is not designated and certified, the act requires the board to be the enforcement agency. The act requires an enforcement agency to, among other things, establish and maintain an inspection program designed to determine whether a solid waste facility is operating without a permit, in violation of state minimum standards, in violation of the terms and conditions of its solid waste facilities permit, or may pose a significant threat to public health and safety or to the environment.

This bill would additionally allow an enforcement agency to include the inspection of illegal dumping activities in its inspection program.

(3) The act prohibits a person from operating a solid waste facility without a permit if that facility is required to have a permit pursuant to the act. The act requires a person who is operating, or proposing to operate, a solid waste facility in violation of the act or permit requirements, upon order of the board or a local enforcement agency, to cease and desist the prohibited activities.

The act authorizes the administrative imposition of civil penalties of up to \$5,000 for each day on which a violation of a specified order occurs and up to \$10,000 for each day of a violation of the terms or conditions of a solid waste facilities permit, the operation of a solid waste facility without a permit, or the violation of a standard adopted by the board. The act authorizes an attorney authorized to act on behalf of the board or a local enforcement agency to petition a superior court for injunctive relief to enforce a permit or standards adopted by the board and the local enforcement agency. The act also requires the Attorney General, upon request of the board, to seek a preliminary or permanent injunction, or both, for a failure of a person to comply with a final order issued by the board or a local enforcement agency.

This bill would additionally apply those procedures to injunctive relief to enforce, and civil penalties imposed for violations of, specified provisions relating to garbage and refuse disposal.

~~The bill would also provide that, in a civil action to enforce those provisions, in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it would not be necessary to allege or prove at any stage of the proceeding that irreparable damage~~

~~will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued or that the remedy at law is inadequate and would require a court to issue that injunctive relief without those allegations and without that proof.~~

(4) The act requires the board to initiate a program for the cleanup of solid waste disposal sites and for the cleanup of solid waste at specified hazardous substances release sites where the responsible party cannot be identified or is unable or unwilling to pay for remediation, and where that cleanup is needed to protect public health and safety or the environment. Under that program, the board is authorized to expend funds directly for cleanup, to provide loans to parties that demonstrate the ability to repay state funds, to provide partial grants to public entities to assist in site cleanup, and to abate illegal disposal sites.

This bill would allow the board to establish a grant and loan program to make loans and grants to public agencies and nonprofit organizations to fund local, regional, or statewide illegal dumping enforcement programs to reduce the occurrence of illegal dumping in the state. The bill would allow the board to expend moneys in the Integrated Waste Management Account in the Integrated Waste Management Fund, and other funds, upon appropriation by the Legislature, for the purposes of that program. The bill would require the board to adopt regulations to implement the illegal dumping grant and loan program before making any of *these* grants or loans.

(5) The act authorizes a local governmental agency to determine aspects of solid waste handling that are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and the nature, location, and extent of providing solid waste handling services.

This bill would require the board to adopt a model local ordinance for the permitting of refuse hauler service providers, as defined, on or before January 1, 2010, and would require that model ordinance to include, among other things, standards for the inspection of hauling vehicles, as defined. The bill would require the board to post the model ordinance on its Internet Web site, upon adoption of that model ordinance. The bill would authorize a local governmental agency to adopt the model local ordinance.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Refuse hauler service providers are an important component
4 of the system for handling solid waste in most communities in
5 California.

6 (b) Refuse hauler service providers supplement the organized
7 collection, transportation, and disposal of solid waste provided by
8 franchisees by providing fee-based, on-request services to
9 residential dwellings and businesses, including the collection,
10 transfer, and disposal of solid waste.

11 (c) In some instances, unethical business practices, illegal
12 dumping, and related conditions threaten the public health and
13 safety and the environment and require local regulation of refuse
14 hauler service providers to protect the health, safety, and welfare
15 of the citizens of California.

16 SEC. 2. Section 40001 of the Public Resources Code is
17 amended to read:

18 40001. (a) The Legislature declares that the responsibility for
19 solid waste management is a shared responsibility between the
20 state and local governments. The state shall exercise its legal
21 authority in a manner that ensures an effective and coordinated
22 approach to the safe management of all solid waste generated
23 within the state and shall oversee the design and implementation
24 of local integrated waste management plans.

25 (b) The Legislature further declares that it is the policy of the
26 state to assist local governments in minimizing duplication of
27 effort, and in minimizing the costs incurred, in implementing this
28 division through the development of regional cooperative efforts
29 and other mechanisms which comply with this division.

30 (c) The Legislature further declares that market development
31 is the key to successful and cost-effective implementation of the
32 25-percent and 50-percent diversion requirements required pursuant
33 to Section 41780, and that the state must take a leadership role,
34 pursuant to Chapter 1 (commencing with Section 42000) of Part
35 3, in encouraging the expansion of markets for recycled products
36 by working cooperatively with the public, private, and nonprofit
37 sectors.

(d) The Legislature further declares that illegal dumping abatement, enforcement, and public awareness programs should be included among the services provided by state and local integrated waste management programs and the state should coordinate illegal dumping programs.

SEC. 3. Section 40053.5 is added to the Public Resources Code, to read:

40053.5. This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of a city, county, or district to impose and enforce any conditions or restrictions on, or abate the effects of, illegal dumping or any other disposal or abandonment of solid waste at a location that violates a local ordinance or regulation, if the conditions or restrictions do not conflict with or impose lesser requirements than the policies, standards, and requirements of this division and all regulations adopted pursuant to this division.

~~SEC. 3.~~

SEC. 4. Section 40144 is added to the Public Resources Code, to read:

40144. "Illegal dumping" means the disposal of solid waste at a location that is not a permitted solid waste disposal facility or that is not otherwise authorized for the disposal of solid waste pursuant to this division or regulations adopted by the board. "Illegal dump" means a location at which illegal dumping has occurred.

~~SEC. 4.~~

SEC. 5. Section 43209 of the Public Resources Code is amended to read:

43209. The enforcement agency, within its jurisdiction and consistent with its certification by the board, shall do all of the following:

(a) Enforce applicable provisions of this part, regulations adopted under this part, and terms and conditions of permits issued pursuant to Chapter 3 (commencing with Section 44001).

(b) Request enforcement by appropriate federal, state, and local agencies of their respective laws governing solid waste storage, handling, and disposal.

(c) File with the board, upon its request, information the board determines to be necessary.

1 (d) Develop, implement, and maintain inspection, enforcement,
2 permitting, and training programs.

3 (e) Establish and maintain an enforcement program consistent
4 with regulations adopted by the board to implement this chapter,
5 the standards adopted pursuant to this chapter, and the terms and
6 conditions of permits issued pursuant to Chapter 3 (commencing
7 with Section 44001). The enforcement agency may establish
8 specific local standards for solid waste handling and disposal
9 subject to approval by a majority vote of its local governing body,
10 by resolution or ordinance. Those standards shall be consistent
11 with this division and all regulations adopted by the board.

12 (f) Keep and maintain records of its inspection, enforcement,
13 permitting, training, and regulatory programs, and of any other
14 official action in accordance with regulations adopted by the board.

15 (g) Consult, as appropriate, with the appropriate local health
16 agency concerning all actions which involve health standards. The
17 consultation shall include affording the health agency adequate
18 notice and opportunity to conduct and report the evaluation as it
19 reasonably determines is appropriate.

20 (h) Establish and maintain an inspection program. The inspection
21 program shall be designed to determine whether a solid waste
22 facility is operating without a permit, or in violation of state
23 minimum standards, or in violation of the terms and conditions of
24 its solid waste facilities permit, or may pose a significant threat to
25 public health and safety or to the environment, based on any
26 relevant information. The inspection program shall also ensure
27 frequent inspections of solid waste facilities that have an
28 established pattern of noncompliance with this division, regulations
29 adopted pursuant to this division, or the terms and conditions of a
30 solid waste facilities permit. The inspection program may include
31 the inspection of illegal dumping activities.

32 ~~SEC. 5.~~

33 *SEC. 6.* Section 45014 of the Public Resources Code is
34 amended to read:

35 45014. (a) Upon the failure of a person to comply with a final
36 order issued by a local enforcement agency or the board, the
37 Attorney General, upon request of the board, shall petition the
38 superior court for the issuance of a preliminary or permanent
39 injunction, or both, as may be appropriate, restraining the person
40 from continuing to violate the order or complaint.

1 (b) An attorney authorized to act on behalf of the local
2 enforcement agency or the board may petition the superior court
3 for injunctive relief to enforce this part, Part 8 (commencing with
4 Section 49000), a term or condition in a solid waste facilities
5 permit, or a standard adopted by the board or the local enforcement
6 agency.

7 (c) In addition to the administrative imposition of civil penalties
8 pursuant to this part and Article 6 (commencing with Section
9 42850) of Chapter 16 of Part 3, an attorney authorized to act on
10 behalf of the local enforcement agency or the board may apply, to
11 the clerk of the appropriate court in the county in which the civil
12 penalty was imposed, for a judgment to collect the penalty. The
13 application, which shall include a certified copy of the decision or
14 order in the civil penalty action, constitutes a sufficient showing
15 to warrant issuance of the judgment. The court clerk shall enter
16 the judgment immediately in conformity with the application. The
17 judgment so entered shall include the amount of the court filing
18 fee which would have been due from an applicant who is not a
19 public agency, and has the same force and effect as, and is subject
20 to all the provisions of law relating to, a judgment in a civil action,
21 and may be enforced in the same manner as any other judgment
22 of the court in which it is entered if the amount of the unpaid court
23 filing fee is paid to the court prior to satisfying any of the civil
24 penalty amount. Thereafter, a civil penalty or judgment recovered
25 shall be paid, to the maximum extent allowed by law, to the board
26 or to the local enforcement agency, whichever is represented by
27 the attorney who brought the action.

28 ~~SEC. 6.~~

29 *SEC. 7.* Section 45024 of the Public Resources Code is
30 amended to read:

31 45024. An attorney authorized to act on behalf of the board or
32 a local enforcement agency may petition the superior court to
33 impose, assess, and recover the civil penalties authorized by
34 Section 45023 or Part 8 (commencing with Section 49000).
35 Penalties recovered pursuant to this section shall be paid, to the
36 maximum extent allowed by law, to the board or to the local
37 enforcement agency, whichever is represented by the attorney
38 bringing the action.

39 ~~SEC. 7.~~ Section 45025 is added to the Public Resources Code,
40 to read:

~~45025. In a civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued, or that the remedy at law is inadequate; and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without those allegations and without that proof.~~

SEC. 8. Chapter 2.7 (commencing with Section 48300) is added to Part 7 of Division 30 of the Public Resources Code, to read:

CHAPTER 2.7. ILLEGAL DUMPING GRANT AND LOAN PROGRAM

48300. (a) The board may establish an illegal dumping grant and loan program to provide grants and loans to public agencies and nonprofit organizations to fund local, regional, or statewide illegal dumping enforcement programs for the purpose of reducing the occurrence of illegal dumping in the state.

(b) Grants and loans provided by the board pursuant to subdivision (a) may be used for, but shall not be limited to, the following purposes:

- (1) Equipment.
- (2) Abatement.
- (3) Training.
- (4) Public education.
- (5) Program development.

48301. The board shall adopt regulations to implement the illegal dumping grant and loan program described in Section 48300 before making a grant or loan pursuant to that section.

48302. The board may expend moneys in the Integrated Waste Management Account in the Integrated Waste Management Fund and other funds as appropriate, upon appropriation by the Legislature, for purposes of providing grants and loans pursuant to Section 48300.

SEC. 9. Chapter 8 (commencing with Section 49700) is added to Part 8 of Division 30 of the Public Resources Code, to read:

1 CHAPTER 8. REFUSE HAULER SERVICE PROVIDER LOCAL PERMIT
2 MODEL ORDINANCE
3

4 49700. For purposes of this chapter, the following terms have
5 the following meanings:

6 (a) “Hauling vehicle” means a motor-propelled or self-propelled
7 vehicle that is used for hauling solid waste over the public streets
8 of unincorporated and incorporated areas of a county for
9 compensation, regardless of whether the operations of that vehicle
10 extend beyond the boundaries of the county.

11 (b) “Refuse hauler service provider” means a person who, for
12 compensation, accepts or collects, and transports, solid waste from
13 a residential, commercial, or industrial location, for the purpose
14 of subsequent transfer or disposal of that solid waste. “Refuse
15 hauler service provider” does not include a public agency or
16 franchise hauler that transports solid waste in accordance with a
17 franchise agreement with a local government or other public
18 agency.

19 49700.2. (a) On or before January 1, 2010, the board shall
20 adopt a model ordinance that establishes a permitting program for
21 refuse hauler service providers. The model ordinance may include,
22 but shall not be limited to, the following elements:

23 (1) Permitting requirements for refuse hauler service providers.

24 (2) Standards for inspection of hauling vehicles.

25 (3) Penalties for noncompliance and other enforcement
26 mechanisms.

27 (4) Administrative hearing procedures for appeals of
28 enforcement actions.

29 (5) Requirements for hauling vehicles relating to safety,
30 cleanliness, and signage.

31 (6) Standards for providing receipts of service.

32 (7) Local funding mechanisms.

33 (b) The board shall post the model ordinance described in
34 subdivision (a) on its Internet Web site.

35 (c) A city or county may, but is not required to, adopt the model
36 ordinance described in this section.